

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of:)	
)	
Schools and Libraries)	WC Docket No.: 02-6
Universal Service Support)	
Mechanism)	
)	
Request for Review by)	
)	
Dayton City (TN) School District)	Application Nos.: 918525
and Scott County (TN) School District)	and 964508
of Funding Decisions by the)	
Universal Service Administrative Company)	

**REQUEST FOR REVIEW BY DAYTON CITY (TN) SCHOOL DISTRICT
AND SCOTT COUNTY (TN) SCHOOL SYSTEM OF DECISIONS BY THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ Dayton City (TN) School District and Scott County (TN) School District (collectively, Applicants) respectfully request a review of a Universal Service Administrative Company (USAC) decision to seek recovery of Schools and Libraries universal service funding from each of the Applicants for Funding Year 2013, FCC Form 471 application numbers 918525 (Dayton City) and 964508 (Scott County). Applicants dispute the existence of the debts that USAC seeks to recover from them. Because USAC's decision places an undue burden on the Applicants and represents an inefficient use of Commission resources, Applicants ask that the Commission reverse USAC's decision to require repayment of the disputed debts by April 14, 2016, by either (1) waiving the

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

requirement that Applicants pay the requested funds within thirty (30) days, or (2) rescinding its approval of USAC's requests for repayment by the Applicants.²

I. Background

Applicants are members of the Sweetwater City School District Consortium (Sweetwater or Sweetwater Consortium), a group of Tennessee school districts that bid collectively on Internet access services eligible for E-rate funding, for delivery beginning in funding year 2013. Applicants submitted individual applications for E-rate funding, using the Sweetwater competitive bidding process, and each Applicant received a funding commitment decision letter (FCDL) approving E-rate funding for funding year 2013. Each Applicant has received some funding under those FCDLs for funding year 2013.³

In October 2015, USAC rescinded its approval of Applicants' requests for E-rate funding for funding year 2013, and denied Dayton City's funding requests for 2014 and 2015.⁴ USAC based the denial of funding on its determinations that Applicants had failed to demonstrate a valid contract with their service provider, ENA Services, LLC, and that Applicants had failed to choose the most cost-effective bid.⁵ The Sweetwater Consortium, on behalf of all of its members, including Applicants, filed a timely appeal of this decision with USAC.⁶

² Applicants also request waiver of section 54.719 of the Commission's rules, 47 C.F.R. § 54.719, to the extent that it requires Applicants to appeal the demand letters to USAC before filing this Request for Review with the Commission.

³ Dayton City received \$23,116.80, and Scott County received \$6,480.00. *See* Exhibit A, revised FCDLs (FY 2013).

⁴ *See* Exhibit B, FCDLs for Dayton City. Scott County did not take service using the Sweetwater Consortium procurement in funding year 2014 or 2015.

⁵ *Id.*

⁶ *See* Exhibit C, Denial Letter from USAC dated March 15, 2016 (a ppeal to USAC filed December 4, 2015).

On March 15, 2016, USAC denied Sweetwater's appeal.⁷ Also on March 15, 2016, USAC sent letters to each of the Applicants demanding repayment of E-rate funds received for funding year 2013.⁸ Accordingly, the Sweetwater Consortium, including the Applicants, has until May 13, 2016 – 60 days after USAC's denial of its appeal – to file an appeal with the Commission,⁹ while Applicants have until April 14, 2016 – 30 days after USAC sent them demand letters – to repay the money it received for funding year 2013.¹⁰ Sweetwater denies USAC's allegations of wrongdoing and intends to file an appeal with the Commission by the May 13 deadline.

Applicants intend to file applications for E-rate support for funding year 2016. The application funding window is open now through April 29, 2016.¹¹ Applications filed by entities on the Commission's red light list are automatically dismissed.¹²

II. The Commission Should Reverse USAC's Decision to Demand Repayment from Applicants Before They Have Had an Opportunity to Appeal to the Commission

Applicants request relief from the Commission on the ground that USAC's demand letters require the Applicants to repay a disputed debt before they have had an opportunity to appeal USAC's findings of alleged violations to the Commission. This outcome is unfair to the Applicants and is administratively inefficient. The Applicants deny USAC's allegations of

⁷ *Id.*

⁸ See Exhibit D, Demand Letters dated March 15, 2016, to Dayton City and Scott County.

⁹ A party has 60 days from the date of a USAC decision to request a review by the Commission. 47 C.F.R. § 54.720(a); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order, FCC 03-101, para. 56 (2003) (extending the appeal deadline from 30 days to 60 days).

¹⁰ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, FCC 04-190, para. 42 (2004) (*Fifth Report and Order*).

¹¹ See USAC FY2016 Filing Window Headquarters, <http://usac.org/sl/tools/window-hq.aspx>.

¹² 47 C.F.R. § 1.910(b)(3)(i); *Fifth Report and Order*, para. 42.

wrongdoing and dispute the existence of the resulting debts. Accordingly, the Applicants ask the Commission to reverse USAC's decision to require repayment of the disputed debts by April 14, 2016, and propose two alternative actions that would achieve the requested relief.

A. USAC's Action Is Unfair and Unduly Burdensome to Applicants

As noted above, USAC is seeking recovery of funds from the Applicants based on findings of alleged wrongdoing by the Sweetwater Consortium, of which the Applicants are members. USAC denied Sweetwater's appeal of those findings on March 15, so Sweetwater has until May 13 to appeal USAC's denial to the Commission. At the same time, USAC is demanding—again, based on the same findings of alleged violations—that the Applicants repay the funds they have received by April 14, a full month before Sweetwater's appeal to the Commission is due.

Thus, in what Applicants believe is an unusual action for the E-rate program, USAC has, in effect, demanded repayment of a disputed debt by the Applicants not just before the associated substantive appeal of USAC's decision is resolved, but before that appeal is even due to the Commission. USAC's action is unduly burdensome to the Applicants who, in response to the demand letters, must either (1) repay a disputed debt before their appeals have been exhausted, which is not required of E-rate recipients;¹³ (2) prepare and file with the Commission – as part of the Sweetwater Consortium – an appeal of USAC's findings of alleged wrongdoing in half the time they would otherwise be allotted under Commission rules; or (3) file the instant application for review of USAC's demand letters, or risk being placed on the Commission's red light list and

¹³ *Fifth Report and Order*, para. 43 (noting that Commission rules “provide the opportunity to contest any finding that monies are owed to the Commission”).

thus jeopardize their ability to apply for E-rate funding for 2016.¹⁴ The Applicants have opted to file this timely appeal of the demand letters, which prevents the Applicants from being placed on the red light list.¹⁵ The requested relief will allow the Applicants to pursue the administrative remedies to which they are entitled under the Commission's rules, and to await a Commission decision with respect to the violations alleged by USAC before they are required to repay any E-rate funds.

B. USAC's Action Constitutes an Inefficient Use of Universal Service Fund and Commission Resources

USAC's action also constitutes an inefficient use of Universal Service Fund and Commission resources: the issuance of demand letters and the denial of the associated appeal on the same day suggest that USAC sought Commission approval of the demand letters before it had officially concluded that a violation of the E-rate rules had taken place.¹⁶ Furthermore, the Commission had to review USAC's actions and approve of the issuance of the demand letters while USAC then had to prepare and issue them – a waste of Universal Service funds when the

¹⁴ See 47 C.F.R. § 1.910(b)(3)(i) ("If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed."); *Fifth Report and Order*, para. 42 ("USAC shall dismiss any outstanding requests for funding commitments if a school or library . . . has not paid the outstanding debt, or made otherwise satisfactory arrangements, within 30 days of the date of the notice provided for in our commitment adjustment procedures.").

¹⁵ See 47 C.F.R. § 1.910(b)(3)(i) ("The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission."); *Fifth Report and Order*, para. 43 ("Applications will not be dismissed pursuant to our red light rule if the applicant has timely filed a challenge through administrative appeal or a contested judicial proceeding to either the existence or amount of the debt owed to the Commission.").

¹⁶ USAC is required to seek Commission approval before issuing demand letters. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order, FCC 00-350, para. 14 (2000).

Commission may overturn USAC's decision on appeal. In addition, USAC's action effectively requires the Commission to consider two requests for relief for the same set of circumstances—in the instant request for review, and again in the consolidated appeal that Sweetwater will file a month from now. By postponing any repayment until the Applicants' administrative remedies are exhausted, the requested relief will prevent further misuse of administrative resources.

C. Applicants Propose Two Options for Granting Relief

The Applicants propose two alternative methods the Commission may use to grant the requested relief:

- Waive the Requirement of Payment Within Thirty Days. Once in receipt of a demand letter from USAC, parties are required to pay the requested amount within 30 days.¹⁷ The Commission could waive this requirement and allow the Applicants to postpone repayment until the completion of the appeals process.

Any of the Commission's rules may be waived if good cause is shown.¹⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ In this case, as explained above, USAC's demand letters impose an undue hardship on the Applicants. In addition, a waiver of the repayment deadline would alleviate some of

¹⁷ *Fifth Report and Order*, para. 42.

¹⁸ 47 C.F.R. § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

the administrative inefficiencies created by USAC's demand letters, thus leading to a more effective implementation of overall E-rate policy in this case. The criteria for waiving the rule is therefore met in all respects.

- Rescind Commission approval of USAC's requests for repayment by the Applicants.

As noted above, the issuance of the demand letters and the denial of Sweetwater's appeal on the same day suggests that USAC sought Commission approval of the demand letters before it had officially concluded that a violation of the E-rate rules had taken place. Under these circumstances, the Commission might consider rescinding approval of USAC's requests for repayment and requiring USAC to resubmit them for approval, if still appropriate, once the Applicants have exhausted their appeals.

Applicants believe that this application is properly before the Commission because it includes a request for waiver²¹ as well as a request for rescission that only the Commission can grant. However, to the extent that section 54.719(b) of the Commission's rules requires Applicants to seek USAC review of the demand letters before filing an appeal with the Commission, Applicants request that the Commission waive that rule.²²

Finally, Applicants believe that the *Fifth Report and Order* allows recipients of E-rate funds to seek Commission review of USAC demand letters.²³ However, the Wireline Competition Bureau has recently indicated that issuance of a demand letter does not, in itself,

²¹ See 47 C.F.R. § 54.719(c).

²² 47 C.F.R. § 54.719(b).

²³ *Fifth Report and Order*, para. 40 ("Parties are already free today to challenge any action of USAC – including the issuance of a demand for recovery of funds – by filing a request for review with this Commission pursuant to section 54.722 of our rules.").

constitute an appealable event.²⁴ To the extent that the Bureau's recent decision may call into question Applicants' ability to seek Commission review of the disputed debts identified in USAC's demand letters, Applicants nonetheless believe that the relief requested in the instant appeal is appropriately before the Commission. Unlike the facts in the Bureau's recent decision, here the issuance of the demand letters effectively resulted in *less* time for the Applicants to submit an appeal to the Commission, rather than more; accordingly, the facts and equities in this case warrant consideration by the Commission.

III. Conclusion

For the foregoing reasons, the Commission should grant Applicants' request for review and reverse USAC's decision to require repayment of E-rate funds by April 14, 2016, by either (1) waiving the requirement that Applicants pay the requested funds within thirty (30) days, or (2) rescinding its approval of USAC's requests for repayment by the Applicants.

Respectfully submitted,



Charles W. Cagle, BPR # 13738
LEWIS, THOMASON KING, KRIEG
AND WALDROP, PC
424 Church Street, Suite 2500
P.O. Box 198615
Nashville, TN 37219
(615) 259-1366

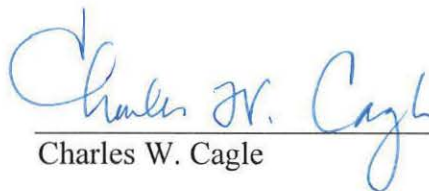
²⁴ *Streamlined Resolution Of Requests Related To Actions By The Universal Service Administrative Company*, Public Notice, DA No. 16-334, at 3 n.7 (rel. Mar. 30, 2016).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record in the manner of service indicated below:

<input type="checkbox"/> Hand	Schools and Libraries Division
<input checked="" type="checkbox"/> Mail	Universal Service Administrative Company
<input type="checkbox"/> Fax	30 Lanidex Plaza West
<input type="checkbox"/> Fed X	P.O. Box 685
<input checked="" type="checkbox"/> Email	Parsippany, NJ 07054-0685
	appeals@sl.universalservice.org

This the 14th day of April, 2016.



Charles W. Cagle



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2013: July 1, 2013 - June 30, 2014

October 30, 2015

Matt Marcus
 DAYTON CITY SCHOOL DISTRICT
 520 CHERRY ST
 DAYTON, TN 37321 1482

Re: Form 471 Application Number:	918525
Funding Year:	2013
Applicant's Form Identifier:	Year 2013 Dayton City
Billed Entity Number:	128277
FCC Registration Number:	0011930955
SPIN:	143030857
Service Provider Name:	ENA Services, LLC
Service Provider Contact Person:	Rex Miller

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

EXHIBIT A

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see "Appeals" in the "Schools and Libraries" section of the USAC website.

EXHIBIT A

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Rex Miller
 ENA Services, LLC

Funding Commitment Adjustment Report for
Form 471 Application Number: 918525

Funding Request Number:	2506944
Services Ordered:	INTERNET ACCESS
SPIN:	143030857
Service Provider Name:	ENA Services, LLC
Contract Number:	2-225071-00
Billing Account Number:	Dayton City Schools
Site Identifier:	128277
Original Funding Commitment:	\$36,000.00
Commitment Adjustment Amount:	\$36,000.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$23,116.80
Funds to be Recovered from Applicant:	\$23,116.80
Funding Commitment Adjustment Explanation:	

We have completed our review of the competitive bid process conducted by the Sweetwater City School District Consortium that utilized Funding Year (FY) 2013 FCC Form 470# 283390001111946. Dayton City School District is listed as a member of the Sweetwater City School District Consortium and also relied upon FCC Form 470# 283390001111946 in awarding services to ENA Services, LLC (ENA) in FY2013, FY2014 and FY2015. Based on our review, we have determined that no valid contract exists between Sweetwater City School District Consortium and ENA. When asked to produce a copy of the related contract, Sweetwater provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract Number 2-225071-00) that was signed and executed on March 7, 2011. During this review, Sweetwater also stated "the cost proposals [from AT&T and ENA] to the Sweetwater bid were lower than the cost proposed in the previous consortium procurement with MNPS." Sweetwater ultimately selected MNPS pricing instead of executing a contract with ENA based on the lower pricing offered to Sweetwater. Thus, there was no contract between Sweetwater City School District Consortium and ENA to provide to USAC demonstrating that Sweetwater selected the most cost effective solution. The FCC Form 470 issued by Sweetwater City School District Consortium, FCC Form 470# 283390001111946, was issued on 1/29/13 and had an Allowable Contract Date (ACD) of 2/26/13. Sweetwater City School District Consortium also issued Request for Proposal (RFP) # 13-1 in conjunction with the posting of the FCC Form 470. Thus, the bidding process conducted by Sweetwater City School District Consortium is independent of the bidding process established between Metropolitan Nashville Public Schools and ENA. Moreover, there is no provision in the Metropolitan Nashville Public Schools contract with ENA, or in the underlying RFP and ENA bid proposal, that allows for the Sweetwater City School District Consortium to piggy-back onto that contract. This contract was established prior to the ACD of the Form 470 issued by the Sweetwater City School District Consortium. Therefore, Sweetwater City School District Consortium failed to establish that a valid contract exists between Sweetwater City School District Consortium and ENA and all FRNs that utilized this FCC Form 470# 283390001111946 are denied. Consequently, FY2013 FCC Form 918525 FRN 2506944 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Based on the documentation provided and reviewed, we determined that Sweetwater Consortium did not choose the most cost-effective bid offering. ENA Services, Inc. (ENA) and AT&T submitted bids to provide E-rate services. Sweetwater selected ENA to provide its E-rate services. ENAs bid proposal was \$9,336,396, \$3 million more than AT&Ts \$6,053,804.04 bid. USAC evaluated Sweetwaters competitive bidding process and the services requested and determined that the applicant did not select the most-cost effective offering. Sweetwater awarded maximum points or near maximum points to ENA in all categories besides eligible cost. Sweetwater scored

EXHIBIT A

AT&T lower in the categories that are not eligible cost of goods and services. Sweetwater was also afforded an opportunity to explain if special circumstances existed that influenced its selection decision. Sweetwater stated AT&T's bid had "defects" and provided "incomplete and/or inadequate responses" which "had the cumulative effect of offsetting the value of a lower sticker price." Sweetwater also stated they had a "lack of confidence in AT&T's ability to deliver the services requested by the RFP" and indicated "the bid team clearly determined that AT&T's bid was deficient and therefore, scored the RFP consistent with that determination." Sweetwater acknowledged that the price differential is "significant." Lastly, Sweetwater indicated that ENA's service offering was unique and was not comparable to AT&T services. A thorough review of the bids provided by ENA and AT&T shows that the bids are similar in the services offered. The Managed Internet Access service, Managed VoIP, and Managed Video Conferencing services offered by both of the services providers in their bids contain similar Network infrastructure, similar Network Support, similar On Premise Network Equipment, similar Monitoring Service, both have similar experience and operate in Tennessee, both have extensive experience with the e-rate program, and both service providers provided references from past customers who were satisfied with the service providers. The circumstances presented by Sweetwater do not justify the selection of a bid over \$3 million more than a competing bid and it has been determined that Sweetwater failed to adhere to the requirements that applicants select the most cost-effective bid offering; therefore, all FRNs that relied upon FCC Form 470# 283390001111946 and its competitive bid process in the award of services to ENA are subsequently denied. Consequently, FY2013 FCC Form 918525 FRN 2506944 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.



Schools and Libraries Division

Notification of Commitment Adjustment Letter
Funding Year 2014: July 1, 2014 - June 30, 2015

October 30, 2015

Bill Hall
SCOTT COUNTY SCHOOL SYSTEM
PO BOX 37 , 208 COURT STREET
HUNTSVILLE, TN 37756

Re: Form 471 Application Number:	964508
Funding Year:	2014
Applicant's Form Identifier:	128350-Y17-ENAVideo
Billed Entity Number:	128350
FCC Registration Number:	0011672631
SPIN:	143030857
Service Provider Name:	ENA Services, LLC
Service Provider Contact Person:	Rex Miller

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Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

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Schools and Libraries Division
Universal Services Administrative Company

cc: Rex Miller
ENA Services, LLC

Funding Commitment Adjustment Report for
Form 471 Application Number: 964508

We have completed our review of the competitive bid process conducted by the Sweetwater City School District Consortium that utilized Funding Year (FY) 2013 FCC Form 470# 283390001111946. Scott County School System is listed as a member of the Sweetwater City School District Consortium and also relied upon FCC Form 470# 283390001111946 in awarding services to ENA Services, LLC (ENA) in FY2013, FY2014 and FY2015. Based on our review, we have determined that no valid contract exists between Sweetwater City School District Consortium and ENA. When asked to produce a copy of the related contract, Sweetwater provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract Number 2-225071-00) that was signed and executed on March 7, 2011. During this review, Sweetwater also stated "the cost proposals [from AT&T and ENA] to the Sweetwater bid were lower than the cost proposed in the previous consortium procurement with MNPS." Sweetwater ultimately selected MNPS pricing instead of executing a contract with ENA based on the lower pricing offered to Sweetwater. Thus, there was no contract between Sweetwater City School District Consortium and ENA to provide to USAC demonstrating that Sweetwater selected the most cost effective solution. The FCC Form 470 issued by Sweetwater City School District Consortium, FCC Form 470# 283390001111946, was issued on 1/29/13 and had an Allowable Contract Date (ACD) of 2/26/13. Sweetwater City School District Consortium also issued Request for Proposal (RFP) # 13-1 in conjunction with the posting of the FCC Form 470. Thus, the bidding process conducted by Sweetwater City School District Consortium is independent of the bidding process established between Metropolitan Nashville Public Schools and ENA. Moreover, there is no provision in the Metropolitan Nashville Public Schools contract with ENA, or in the underlying RFP and ENA bid proposal, that allows for the Sweetwater City School District Consortium to piggy-back onto that contract. This contract was established prior to the ACD of the Form 470 issued by the Sweetwater City School District Consortium. Therefore, Sweetwater City School District Consortium failed to establish that a valid contract exists between Sweetwater City School District Consortium and ENA and all FRNs that utilized this FCC Form 470# 283390001111946 are denied. Consequently, FY2014 FCC Form 964508 FRN 2621204 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Based on the documentation provided and reviewed, we determined that Sweetwater Consortium did not choose the most cost-effective bid offering. ENA Services, Inc (ENA) and AT&T submitted bids to provide E-rate services. Sweetwater selected ENA to provide its E-rate services. ENAs bid proposal was \$9,336,396, \$3 million more than AT&Ts \$6,053,804.04 bid. USAC evaluated Sweetwaters competitive bidding process and the services requested and determined that the applicant did not select the most-cost effective offering. Sweetwater awarded maximum points or near maximum points to ENA in all categories besides eligible cost. Sweetwater scored

EXHIBIT A

AT&T lower in the categories that are not eligible cost of goods and services. Sweetwater was also afforded an opportunity to explain if special circumstances existed that influenced its selection decision. Sweetwater stated AT&T's bid had "defects" and provided "incomplete and/or inadequate responses which "had the cumulative effect of offsetting the value of a lower sticker price." Sweetwater also stated they had a "lack of confidence in AT&T's ability to deliver the services requested by the RFP" and indicated "the bid team clearly determined that AT&T's bid was deficient and therefore, scored the RFP consistent with that determination." Sweetwater acknowledged that the price differential is "significant." Lastly, Sweetwater indicated that ENA's service offering was unique and was not comparable to AT&T services. A thorough review of the bids provided by ENA and AT&T shows that the bids are similar in the services offered. The Managed Internet Access service, Managed VoIP, and Managed Video Conferencing services offered by both of the services providers in their bids contain similar Network infrastructure, similar Network Support, similar On Premise Network Equipment, similar Monitoring Service, both have similar experience and operate in Tennessee, both have extensive experience with the e-rate program, and both service providers provided references from past customers who were satisfied with the service providers. The circumstances presented by Sweetwater do not justify the selection of a bid over \$3 million more than a competing bid and it has been determined that Sweetwater failed to adhere to the requirements that applicants select the most cost-effective bid offering; therefore, all FRNs that relied upon FCC Form 470# 283390001111946 and its competitive bid process in the award of services to ENA are subsequently denied. Consequently, FY2014 FCC Form 964508 FRN 2621204 and any future funding requests that reference FCC Form 470# 283390001111946 are denied and any commitments will be rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2013

EXHIBIT B

Name of Billed Entity: DAYTON CITY SCHOOL DISTRICT
Billed Entity Address: 520 CHERRY ST
Billed Entity City: DAYTON
Billed Entity State: TN
Billed Entity Zip Code: 37321-1482
Billed Entity Number: 128277
Contact Person's Name: Matt Marcus
Preferred Mode of Contact: EMAIL
Contact Information: matt@daytoncity.net
FCC Form 471 Application Number: 919152
Funding Request Number: 2507396
Funding Status: Not Funded
Category of Service: Internet Access
Site Identifier: 47 00930 00315
FCC Form 470 Application Number: 283390001111946
Contract Number: 2-225071-00
Billing Account Number: Dayton City Schools-Voice
Service Start Date: 07/01/2013
Contract Expiration Date: 06/30/2016
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$23,917.80
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$23,917.80
Applicant's Discount Percentage Approved by SLD: 80%
Funding Commitment Decision: \$.00 - Contract Violation
Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). You provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In your response you stated, the cost proposals to the Sweetwater bid were lower than the cost proposed in the previous consortium procurement with MNPS. You selected MNPS pricing instead of executing a contract with ENA. You have not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying REP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, you cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, you have failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENAs bid proposal of \$9,336,396, which is over \$3 million more than AT&Ts \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&Ts bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENAs service offering was unique and not comparable to AT&T. You also state AT&Ts bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that you failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 10/14/2015

Wave Number: 101

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2016

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer: